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April 24, 2001

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 01-88 / Application of Southwestern Bell Pursuant to
Section 271 of the Telecommunications Act of 1996 to Provide
InterLATA Services in Missouri

Dear Ms. Salas:

Enclosed are the comments of WorldCom, Inc. in the above-captioned section 271
application of SBC for the state of Missouri. Please call me with any questions.

Sincerely,



Keith L. Seat

Enclosures

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APR 24 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application by SBC Communications, Inc.
for Authorization to Provide In-Region,
InterLATA Services in Missouri

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CC Docket No. 01-88

**COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY SBC
COMMUNICATIONS INC. FOR AUTHORIZATION TO PROVIDE
IN-REGION, INTERLATA SERVICES IN MISSOURI**

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April 24, 2001

INTRODUCTION AND EXECUTIVE SUMMARY

In granting SBC's section 271 application for Kansas and Oklahoma, the Commission held that pricing of unbundled network elements was sufficient when lowered to the general Texas level that the Commission had previously approved. Regardless of whether that decision was correct in determining cost-based pricing, SBC is now pushing the Commission to approve UNE prices which are significantly higher than now exist in Texas or even those previously examined and approved there.

SBC's pricing problems apply to the two most important network elements required for local competition -- switching and loops. Based on the Commission's own cost analysis, switching is about 50% higher in Missouri than it should be when compared to Texas and Kansas, while loops are almost 25% higher. Granting this application would undermine the statutory requirement for cost-based switching by approving rates that are expressly based only on the discount for switch growth, rather than the much larger discounts typical for initial switch purchases. Further, this application has higher loop rates than have ever previously been approved in any section 271 application, despite strong evidence from the region that higher rates are not appropriate in Missouri.

SBC did not even submit with its application all the important cost studies it used in Missouri to determine its rates. Absent these cost models, and the full set of inputs used in those cost models, SBC has not met its burden to show that its rates are cost based. Provision of the models and their inputs with the application in this proceeding was critical to allow the Commission, WorldCom, the Department of Justice and other interested parties a full and fair

opportunity to assess the full extent of methodological errors underlying SBC's UNE rates. In what has become an all too familiar gambit, SBC apparently filed with the Commission a CD-ROM purporting to contain certain cost spreadsheets late on April 23, which was not received by WorldCom's counsel until the morning these comments were due, despite the fact that WorldCom had alerted both SBC's counsel and the Commission of the need for these materials well before this application was filed. Although we have not reviewed the April 23 submission in detail, it is clear that it does not contain all of the models necessary and is still missing inputs. There are also several issues with the models previously submitted, as well as with the inputs used in those models, that suggest that the Missouri Public Service Commission ("PSC") did not follow TELRIC principles. Several of these issues are acknowledged by the Missouri PSC itself in its Final Arbitration Order.

Nor is pricing the only problem with this application, for SBC has failed to demonstrate that its operations support systems ("OSS") are sufficient. There was no third party test in Missouri, there is no track record of significant commercial usage of SBC's OSS for residential service in the state, and SBC has not proven that its OSS is identical to that in Texas. Actual marketplace experience at significant residential volumes is needed, but is prevented by the high UNE rates that are the focus of these comments.

A further deficiency in this application, which will have significant competitive impact as the demand for broadband services continues to grow, is that SBC fails to explain the terms under which it permits WorldCom and other competitive local exchange carriers ("CLECs") using the UNE-Platform ("UNE-P") to engage in line splitting in order to provide voice and high

speed data services over the same line. Nor does SBC demonstrate any actual capability to do so.

While this is the fourth state in the SBC region to seek section 271 approval, this application is critical to ensure that the Commission's standards are not watered down. The Bell Operating Companies ("BOCs") must not be permitted to daisy-chain applications by claiming that each one is only a little worse than those previously granted, and thereby eliminate the promise of local competition established by the 1996 Telecommunications Act. The Commission must be vigilant and uphold the standards of section 271 in order to give local residential competition every chance of success. Until and SBC's pricing OSS and line splitting problems are fixed, SBC's application must be denied.

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A	Declaration of Chris Frentrup	Pricing
B	Letter from Jerome L. Epstein of Jenner & Block to Geoffrey M. Klineberg of Kellogg, Huber, Hansen, Todd & Evans (March 26, 2001) and Response of Mr. Klineberg	Cost Studies
C	Letter from SBC Chairman and CEO Edward Whitacre to U.S. Congressman W.J. Tauzin (March 14, 2001) and Response of Illinois Commerce Commission	Line Splitting

TABLE OF CITATION FORMS

FCC Orders	
<u>Kansas-Oklahoma Order</u>	<u>In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</u> , CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. Jan. 22, 2001), petition for review filed, <u>Sprint Communications Co. v. FCC</u> , No. 01-1076 (D.C. Cir. filed Feb. 16, 2001)
<u>Louisiana II Order</u>	<u>In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599 (1998).
<u>Local Competition Order</u>	<u>In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , CC Docket Nos. 96-98 & 95-185, First Report and Order, 11 F.C.C.R. 15499 (1996).
<u>Massachusetts Order</u>	<u>In re Application of Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), And Verizon Global Networks Inc., For Authorization to Provide In-Region,</u>

	<u>InterLATA Services in Massachusetts</u> , CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (rel. April 16, 2001).
<u>Michigan Order</u>	<u>In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan</u> , CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997).
<u>New York Order</u>	<u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York</u> , CC Docket No. 99-295, Memorandum Opinion and Order, 15 F.C.C.R. 3953 (1999), <u>aff'd</u> , <u>AT&T Corp. v. FCC</u> , 220 F.3d 607 (D.C. Cir. 2000).
<u>Texas Order</u>	<u>In re Application by SBC Communications Inc., Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas</u> , CC Docket No. 00-65, Memorandum Opinion and Order, 15 F.C.C.R. 18354 (2000).
<u>USF Report and Order</u>	<u>In re Federal State Joint Board on Universal Service</u> , CC Docket No. 96-45, Report and Order, 12 F.C.C.R. 8776 (1997).
<u>USF Tenth Report and Order</u>	<u>In re Federal State Joint Board on Universal Service</u> , CC Docket No. 96-45 & 97-160, Tenth Report and Order, 14 F.C.C.R. 20156 (1999).
Declarations and Affidavits	
Frentrup Decl.	Declaration of Chris Frentrup on Behalf of WorldCom (Tab A hereto)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
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**COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY SBC
COMMUNICATIONS INC. FOR AUTHORIZATION TO PROVIDE
IN-REGION, INTERLATA SERVICES IN MISSOURI**

This application raises the critical question of whether the Commission will approve an ongoing series of section 271 applications, with each one worse than those before it. Here, in addition to OSS and line splitting issues, SBC would have the Commission approve an application even though switching rates, based exclusively on lower growth discounts, are about 50% higher than they should be, and loop rates are higher than in any state ever approved under section 271. As discussed below, because SBC's rates in Missouri are out of line with the rates in its other jurisdictions; because SBC has not submitted all its cost models and their associated inputs; and because the methodology used by the Missouri PSC is not TELRIC-based, the Commission should reject SBC's application.

I. SBC HAS NOT MET ITS BURDEN OF PROVING THAT IT HAS SATISFIED CHECKLIST PRICING REQUIREMENTS

SBC has failed to meet checklist item two, 47 U.S.C. § 271(c)(2)(B)(ii), which imposes on SBC the burden of proving that it has made available unbundled network elements at just, reasonable and non-discriminatory prices based on the costs of the elements. While acknowledging that differences in network costs among states necessarily means that cost-based wholesale rates will vary somewhat, and that the states themselves are in the best position to assess these differences, the Commission made clear that states are not free to set rates at any level they choose so long as they call them “TELRIC.” “[I]t is not the label that is critical in making our assessment of checklist compliance, but rather what is important is that price reflect TELRIC principles and result in fact in reasonable, procompetitive prices.” Michigan Order ¶ 290.¹ As the Commission recently re-affirmed, a rate falls within a reasonable range to the extent any departure from the norm can be explained by specific relevant conditions in the state.² “Reasonable range” is not the same as “anything goes.”

The Commission has made clear that checklist compliance is not a sterile, academic exercise, but a legislative test to assure that local markets are open for competition. The

¹Full citations for the authorities included in these comments are included in the Table of Citation Forms.

² In providing guidance on the meaning of the concept of “range of reasonableness” in the Kansas-Oklahoma Order, ¶ 91 & n.266, the Commission pointed to an earlier Universal Service order where it allowed for a 15% variation in a fixed amount allowed for corporate operations expenses “recognizing that small study areas, based on the number of lines, may experience greater amounts of corporate operations expense per line than larger study areas.” USF Report and Order ¶ 283. Thus, in recognition of the fact that there are certain differences in geography among states, small variations in UNE pricing may be within a range of reasonableness in UNE rates.

Commission adopted TELRIC precisely “to expedite the development of fair and efficient competition.” Local Competition Order ¶ 618.

By definition, “cost-based” rates must be supported by cost studies proving that the rates are derived from the forward-looking cost of providing the leased elements, taking into account the particular circumstances present in each state. The Commission has specifically stated that it expects “a BOC to include in its application detailed information concerning how unbundled network element prices were derived.” Michigan Order ¶ 291 (footnote omitted). Rates cannot be proved to be “based on cost” unless there is some way to compare those rates with the BOC’s underlying network costs. Moreover, in addition to the technical analysis provided by supporting cost studies, the Commission has found relevant comparisons with rates and inputs in other states, Kansas-Oklahoma Order ¶¶ 82, 87, as well as comparisons to the costs that are computed in the Commission’s own Synthesis Model used for setting the universal service subsidy. Id. ¶¶ 80, 84; Massachusetts Order ¶¶ 23, 25.

The Commission is expressly prohibited from granting a section 271 application unless it has determined whether a BOC has met the requirements for interLATA in-region entry, including the requirement of cost-based pricing of unbundled network elements. See 47 U.S.C. § 271(d)(3)(A). Section 271 also establishes the level of deference the Commission owes to other agencies’ review. The Commission is required to consult with the Attorney General and to “give substantial weight” to DOJ’s evaluation. See id. § 271(d)(2)(A). The Commission is also required to consult with the applicable state commission, but does not owe any particular deference to its views. See id. § 271(d)(2)(B). The Commission has therefore acknowledged

that it has the exclusive responsibility for determining checklist compliance (Michigan Order ¶ 282), a conclusion also reached by the D.C. Circuit (SBC Communications v. FCC, 138 F.3d 410, 416-17 (D.C. Cir. 1998)).

A. SBC's Switching Rates Are Not at TELRIC Levels

Switching is a crucial input for local competition, but the UNE rates adopted by the Missouri PSC for switching are unreasonably high and are not cost-based. The switch usage rate in Missouri is nearly 50% more than the Texas and Kansas rates on a per minute basis, even though the cost relationships from the Commission's Synthesis Model suggest that the Kansas and Missouri costs are nearly identical, and less than 20 percent above the Texas cost. Frentrup Decl. ¶ 8-9. The Missouri switch usage rate must be reduced by about a third to bring it in line with TELRIC costs. Id. This would bring it to a level that approximates the rates in Texas and Kansas that the Commission has found to be TELRIC-based.³

The Missouri rates for switch usage cannot be TELRIC-based because they substantially exceed rates in Texas and Kansas without any significant difference in costs between the states. WorldCom has attempted to identify issues with the design of the cost models used to set the rates, and with the inputs used in those models, that will enable a computation of TELRIC-based rates. However, SBC did not file with its application the electronic versions of the cost models it used to set its rates, despite WorldCom's reminder to SBC's counsel well before the application

³ Texas and Kansas rates are used to determine if other states' rates in the region appear to be TELRIC-based, rather than Oklahoma rates, due to the more careful costing analysis conducted in Kansas and Texas. Concerns and problems were raised about the costing analysis performed in Oklahoma, see, e.g., Kansas-Oklahoma Order ¶ 80 (Oklahoma's loop rates not TELRIC compliant).

was filed that the electronic versions would be critical.⁴ Without these cost models, WorldCom cannot quantify the effect of these issues on rates with any specificity. Frentrup Decl. ¶ 12. Since it did not include these models in its application, SBC has not met its burden of proof that the UNE rates in Missouri are cost-based. SBC did file a CD-ROM containing certain cost spreadsheets late on April 23, which was not received by WorldCom's counsel until the morning these comments were due. But that late submission does not comply with the Commission's rules and does not permit commenters the ability to analyze the materials in time for these comments. The Commission should not tolerate this type of gamesmanship.⁵ Nor does the late filing include the most critical models for analyzing either switching (the SCIS model) or loops (LPVST), as discussed below.

In particular, SBC develops information on basic "switching investment" through the use of the Switching Cost Information System ("SCIS") model. SCIS is a proprietary engineering cost model developed by Telcordia (formerly Bellcore). Because SBC has not placed this model on the record in this proceeding, and does not even attempt to provide any other defense of its rates, it has failed to meet its burden of proving that its pricing is based on the cost of providing

⁴ See Letter from Jerome L. Epstein of Jenner & Block on behalf of WorldCom to Geoffrey M. Klineberg of Kellogg, Huber, Hansen, Todd & Evans on behalf of SBC, dated March 26, 2001 (attached at Tab B along with Mr. Klineberg's response), emphasizing the need for SBC's cost models to be submitted with its application. In telephone conversations with Mr. Klineberg prior to the application being filed, counsel for WorldCom not only stated that the electronic versions needed to be filed by SBC, but provided the names of the specific models that are most critical to TELRIC analysis.

⁵ Since SBC chose not to file this section 271 application with complete and adequate support, the Commission should reject the application, and invite SBC to refile with all relevant cost models and inputs. Refiling the application will permit the Commission and commenters, including the state commission and DOJ, the ability to properly review and analyze the full extent and impact of TELRIC errors. The Commission has consistently held that a BOC must include in its section 271 application "all of the factual evidence on which the

switching. Frentrup Decl. ¶ 16. Because SBC has neither made the SCIS model available for review in this proceeding, nor even presented the outputs of SCIS that were used to set the switching rates, WorldCom is unable to determine what is included in the level of investment reported for switching. Furthermore, SBC has also failed to provide a full list of the inputs used in SCIS. Without these inputs, the Commission has no basis to find SBC's switching rates proper and reasonable.

Despite our inability to see all necessary cost models and inputs, WorldCom has been able to identify several input and model design issues that at least partially explain the overstatement of costs identified above. For the most part, we are unable to quantify the precise effect of these problems because SBC has withheld the information required to make such calculations. Nevertheless, it is clear that there are substantial problems with the model and the inputs used for the development of switching and loop costs that have resulted in rates that are clearly excessive.

1. Switch Vendor Discounts

One important input used in SCIS, which the Missouri Final Arbitration Order of July 31, 1997 does address, is the vendor discounts on list prices for switches. In the development of the Synthesis Model in the FCC's universal service proceeding, the Commission determined that it should rely only on the initial switch vendor discounts -- the very substantial discount that a BOC typically receives when it purchases a new switch -- and expressly rejects reliance on

applicant would have the Commission rely in making its findings." Texas Order ¶ 35 (citations omitted). SBC has long been on notice of this standard.

switch growth discounts.⁶ This was appropriate, the Commission concluded, because initial switch purchases reflected cost-effective forward-looking technologies. USF Tenth Report and Order ¶ 317. In setting UNE rates, states have taken various approaches, with some states following the FCC and using only initial switch discounts, while others have used some weighted average of the initial and growth switch discounts.⁷ Importantly, a federal court recently held that state commissions should use the initial switch discount in establishing unbundled switching rates. Bell Atlantic-Delaware, Inc. v. McMahon, 80 F. Supp. 2d 218, 236-39 (D. Del. 2000).

Yet in Missouri, for the first time, a PSC has decided to use only the discounts on purchases of growth switches. When these discounts have been examined in other proceedings at the Commission and in the states, they have typically been found to be substantially lower than the discounts on initial switch purchases. Thus, the Missouri PSC's decision to use only growth discounts is likely inflating the cost of switching significantly. Frentrup Decl. ¶ 18. Unfortunately, it is impossible to determine the amount by which switch costs are inflated by this input, because SBC has not reported this input in its filing. It is clear, however, that using only this lower growth discount is not consistent with TELRIC principles. Frentrup Decl. ¶ 19.

⁶ Although the Commission previously indicated that the Synthesis Model should not be used to determine rate levels for unbundled network elements, the Commission has stated that the Synthesis Model can be used to compare the relative differences in costs between states. Massachusetts Order ¶ 40.

⁷ The Commission is aware from the record developed in Texas that the switch vendor discount used by the Texas Public Utilities Commission was approximately 70%. In addition, in the recent Massachusetts section 271 proceeding, Verizon eventually permitted WorldCom to provide the Commission with evidence of the very large New York switch discounts that are on the record as part of the current New York state proceeding to correct switching rates in New York. On April 5, 2001, WorldCom submitted that information in a proprietary ex parte submission in Docket No. 01-9.

2. Hardware Factor

The overstatement of switching investment in Missouri is further compounded by SBC's method of computing the investment in various pieces of additional switch-related equipment. SBC determines the ratio of investment in these pieces of equipment to switch investment, based on adjusted historical data, and multiplies this "hardware factor" by the SCIS investment. Thus, any amount by which the SCIS investment is overstated through the use of smaller growth discounts will also result in excessive hardware investment. Frentrop Decl. ¶ 20.

In addition to this source of overstated hardware investment, the manner in which the factor is developed itself may well overstate the investment, as the Missouri PSC acknowledges. In accepting the use of this factor, the Missouri PSC notes that the equipment included in this factor may be double-counted in other investment. Frentrop Decl. ¶ 21. It also expresses concern that the factor, which is developed based on historical relationships between switch and hardware investment in SBC's network, may be based on old technology and therefore overstated. *Id.* Despite these acknowledged problems, the Missouri PSC makes no adjustments to the factor. Based on data included in SBC's filing, it appears that this factor adds about 8 percent onto the switching cost. Frentrop Decl. ¶ 22. Given the PSC's admitted uncertainty about the correctness of this factor, the FCC should give no deference to the Missouri PSC's decision to include this factor in the computation of switching costs.

3. Depreciation Factor

The Missouri PSC also adopts a projection life and net salvage for switches that result in switching costs that are too high by 12-15%. Projection life and net salvage are combined to develop a depreciation factor that is used to determine depreciation expense.⁸ Frentrup Decl. ¶ 23. The resulting annual depreciation expense is 10.21 percent of total switch investment, which is far higher than would have resulted if the PSC had used either the values adopted by the FCC for use in the Synthesis Model (6.09 percent) or the values that the PSC has adopted for SBC's retail rates (5.14 percent). Frentrup Decl. ¶ 23. Use of the Synthesis Model factor would lower switching costs about 12 percent, while use of the SBC intrastate retail factor would lower switching costs about 15 percent. Id.

B. SBC's Loop Rates Are Not at TELRIC Levels

Loops are generally the single largest network element cost to competitors when attempting to provide local competition via UNE-platform. Unfortunately, loops are also set at excessive rates in Missouri. Not only are loops in Missouri notably higher than Texas and Kansas, but at \$17.40 per month, are higher on a statewide basis than loops in any state for which section 271 authorization has been granted. The loop rates adopted in the adjacent state of Kansas are \$14.04 a month, while the comparable rate in Texas is \$14.15, and even Oklahoma is \$14.84. Frentrup Decl. ¶ 10, n.3.

The unreasonableness of this difference is confirmed by comparison of the relative loop costs computed in the Commission's Synthesis Model. The Missouri rates are more than 24

⁸ The formula is $(1 - \text{Net Salvage}) / \text{Depreciation Life}$. Net salvage is the value that is left at the end of the service life of the plant.

percent higher than Kansas, but the Synthesis Model computes loop costs in Kansas and Missouri as almost identical, both being about 14 percent above the cost in Texas, while the cost in Oklahoma is 6 percent higher than the Kansas and Missouri costs. Frentrop Decl. ¶ 11. Given these cost relationships, it is unreasonable that Missouri's loop rate is so high. Based on relative costs using the Synthesis Model, Missouri loop rates should be close to \$14, rather than the \$17.40 rate Missouri approved. Id.

There are also a number of problems with the models used to develop loop costs and the inputs used in those models that result in loop cost estimates that exceed TELRIC levels.

1. Depreciation Factor

First, there is the identical problem with the depreciation lives and net salvage values selected by the Missouri PSC as discussed with switching rates above. These erroneous values also have the same effect -- overstating loop costs by about 12 percent if the Synthesis Model values are used, or by about 15 percent if SBC intrastate retail rates are used. Frentrop Decl. ¶ 24.

2. Fill Factor

The next input problem in the loop model is the fill factors used for copper distribution and fiber feeder. The Missouri PSC adopted a 40 percent distribution fill factor, the exact level that the Commission rejected in its Massachusetts Order due to the 50-75% fill factor used in the Synthesis Model and information from other states.⁹ Frentrop Decl. ¶ 25. In addition, the fiber feeder fill factor is set at 85 percent rather than the 100 percent factor used in the Synthesis

Model, based on the fact that fiber cable can be “resized” simply by changing the electronics at the end of the fiber and, therefore, does not require additional fibers to accommodate growth or spares. Although adjustments to these two inputs are clearly warranted, WorldCom is unable to determine the magnitude of rate changes that should result from making these changes, because SBC has not filed its LPVST model that is used to compute loop investment.¹⁰ Id.

3. Poles and Conduit

The Missouri PSC also included an unrealistically low amount of sharing of both poles and conduit. The UNE rates are computed for Missouri assuming that SBC is bearing approximately half the cost of the poles in all zones, even though the Commission found that sharing was as high as 65 percent in the more urban zones, meaning that SBC would bear only 35% of the cost. Frentrop Decl. ¶ 26. Far worse, the Missouri PSC assumes that SBC will share only 0.09 percent of its conduit with other parties. This is completely inconsistent both with the Synthesis Model, which used sharing of as high as 55 percent in the more urban zones, and with findings in other states. Id. Using this dramatically low level of sharing vastly overstates the

⁹ Massachusetts Order ¶ 39.

¹⁰ See discussion of need for SBC to provide support for its application, above.

cost of conduit for loop plant. Again, however, since SBC did not file its LPVST model, WorldCom cannot quantify the effect of these understated sharing percentages. Id.

4. IDLC-UDLC Mix

SBC's computation of loop costs also uses a mix of integrated and universal digital loop carrier ("DLC") that is apparently based on the mix in its historic, embedded network. This is a clear TELRIC error. The forward-looking technology is integrated DLC, as this technology allows more efficient, lower cost provisioning of loops. For this reason, the FCC uses only integrated DLC in its cost model. Frentrup Decl. ¶ 27. SBC has not filed the mix of integrated and universal DLC used in determining its UNE loop rates with its application, nor the model that uses those inputs to determine loop costs, so it is impossible to determine the effect of using this inefficient technology on loop costs. Id.

5. Feeder Plant Tapering

The final issue WorldCom has identified with the cost model information available is the lack of tapering of the feeder plant. Lack of tapering means that the fiber feeder cable is larger than necessary at the end of its run to serve the number of customers at that point in the network. As the Missouri PSC acknowledges, this overstates loop cost. Frentrup Decl. ¶ 28. Despite this acknowledgement, however, the PSC proposed no change or adjustment to the model to correct this error. This overstatement of cost could be substantial. However, without the model, WorldCom is unable to determine the impact of this model design flaw. Id.

* * * * *

These problems with the switching and loop models and their inputs indicate that the resulting switching and loop rates are clearly not TELRIC-based, although the precise magnitude of the errors cannot be determined on the partial information provided in SBC's application. Since Missouri's loop rates exceed the levels that would be expected given the rates and costs in the other SBC states, as demonstrated above, it seems clear that the errors are substantial. The Commission should reject SBC's claim that it satisfies the competitive checklist by offering cost-based UNE rates.

II. SBC HAS NOT SHOWN THAT IT HAS SATISFIED OTHER CHECKLIST OBLIGATIONS

In addition to non-cost-based pricing, SBC fails to satisfy checklist requirements because it fails to provide sufficient evidence of adequate working OSS or line splitting.

A. SBC's OSS Is Not Backed By Sufficient Commercial Experience or a Third Party Test

In order to satisfy checklist item two, 47 U.S.C. § 271(c)(2)(B)(ii), and allow WorldCom and other competitive local exchange carriers ("CLECs") to compete on an equal footing in Missouri, SBC must provide reasonable and nondiscriminatory access to its OSS. See, e.g., Texas Order ¶¶ 94-98; New York Order ¶¶ 83-87. The Commission has consistently found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. See, e.g., Massachusetts Order ¶ 43. In an application to provide long distance

service, the applicant has the burden of proving that it provides such non-discriminatory access.¹¹

As the Commission has stated, OSS-readiness is best shown by commercial experience,¹² or, barring that, an independent, third-party test. Texas Order ¶ 98. SBC used neither of these methods to show OSS-readiness in Missouri. As in its Kansas/Oklahoma application, SBC again asks that the Commission merely rely on its claim that its systems are the same in Missouri as they are in Texas, where there was both commercial experience and a third party test. Once again, SBC's claims that its systems are identical in Texas and Missouri provides WorldCom with little certainty that SBC's OSS can withstand competitive entry in Missouri. Given that a competing carrier could be "precluded altogether" from competing in the local exchange market without non-discriminatory access to OSS,¹³ the Commission should carefully consider mere assertions by SBC that its OSS will work because they are generally the same as those in Texas - whether or not endorsed by the applicant's longstanding auditor. The easing of the requirements that incumbent carriers actually prove the workability of their OSS surely would eliminate any hope of residential local competition taking hold throughout the country.

SBC's commercial experience with UNE-P orders in Missouri is minimal. Despite some competition among CLECs for business customers, commercial volumes of residential orders just do not exist in Missouri. As discussed above, current UNE prices are not TELRIC and

11 See FCC Public Notice DA 01-734, Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, at 4 (issued Mar. 23, 2001) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969))

12 This Commission has repeatedly recognized that "the most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage." See, e.g., New York Order ¶¶ 53-54.

13 See, e.g., New York Order ¶ 83.

therefore prohibit widespread economic entry via UNE-P.¹⁴ As a result, SBC does not rely on any competitive carrier that has been able to enter the residential market and provide commercial volumes of experience that demonstrate workable OSS.¹⁵

In the absence of commercial experience, the incumbent should demonstrate OSS-readiness through a viable third-party test in the state for which the incumbent is seeking section 271 authorization. No such test existed in Missouri. Instead, SBC engaged its longstanding auditor, Ernst & Young to show that SBC's OSS systems are the "same" in Missouri as they are in Texas. But Ernst & Young conducted a surface-level evaluation that primarily checked "sameness" between Missouri and Texas and included no input from CLECs, aside from a question-and-answer session after the fact. Before gaining section 271 approval in Missouri, SBC should be required, consistent with FCC precedent, to provide credible evidence specific to Missouri that CLECs can process UNE-P orders and engage in meaningful local competition.

14 WorldCom remains committed to providing local residential service using UNE-P, but not where UNE pricing or the ILECs' OSS prohibit profitable entry. In New York, Texas, Pennsylvania, Michigan and Illinois, where the state commissions have done much of the necessary work to set rates at or close to TELRIC, and where the BOCs have complied or are seeking to comply with this Commission's other market-opening rules, WorldCom has responded by offering local service to the extent possible in the state.

15 It is not clear whether any CLEC provides more than a minimal amount of local residential service over its own facilities in Missouri. Certainly SBC errs in claiming that WorldCom provides facilities-based residential service in Missouri (SBC Brief. at 9); WorldCom does not, as we have previously clarified. See Second Supplemental Comments of WorldCom in Missouri PSC Docket TO-99-227 at 3 n.2 (Nov. 30, 2000).

B. SBC Has Not Demonstrated That It Currently Enables Line Splitting on Reasonable and Nondiscriminatory Terms and Conditions

In order to satisfy checklist items two (unbundled elements), four (loops) and six (unbundled switching), 47 U.S.C. § 271(c)(2)(B)(ii), (iv) & (vi), and offer WorldCom and other competitors an opportunity to satisfy the growing demand for DSL-based services, SBC must provide reasonable and nondiscriminatory access to network elements needed to allow CLECs to engage in line splitting using the UNE-Platform (“UNE-P”). See Massachusetts Order ¶ 174; Texas Order ¶¶ 324-325; see also id. ¶¶ 214-215 (incumbent must provide access to combinations of unbundled elements); 47 C.F.R. § 51.307 (incumbent must provide access to unbundled elements, including loops, in a manner that allows a CLEC to provide any telecommunications service that can be offered using the element).

Incumbent LECs are required to make all necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. Thus, an incumbent LEC must perform the central office work necessary to deliver unbundled loops and switching to a competing carrier’s physically or virtually collocated splitter that is part of a line splitting arrangement.

Despite these requirements and the critical importance of line splitting, SBC in this application provides insufficient detail on the terms and conditions of its offering. SBC does not discuss the extent to which its OSS is operationally prepared to support its line splitting offering,

how CLECs would order the service, or how quickly the work would be performed. These are critical pieces of information that leave many important questions unanswered regarding the potential for DSL competition in Missouri. SBC has failed to explain clearly the method by which CLECs can order and combine UNEs at cost based rates. Furthermore, SBC points to neither commercial experience in providing line splitting, nor to third party testing of its provisioning of this arrangement. In addition, SBC admittedly fails to provide non-discriminatory access to line splitting, because it does not provide competitors with a single-order process. Instead, competitors must go through a multi-level ordering process, at least until SBC fulfills its paper promise of offering, by October 20, 2001, a single-order process for line splitting.¹⁶ Line splitting for UNE-P users must be available on terms and conditions equivalent to line sharing without creating discriminatory, excessive costs and service disruption. Until SBC can confirm the availability of line splitting via UNE-P, it cannot be found that SBC is offering nondiscriminatory access to UNEs sufficient to permit section 271 approval.

Beyond the conspicuous absence of details in its application regarding the terms and conditions under which SBC will provide the elements necessary for line splitting, perhaps even more alarming is the letter sent by SBC Chairman and CEO Edward Whitacre to U.S. Congressman W.J. Tauzin on March 14, 2001 (attached at Tab C along with the response of the Illinois Commerce Commission). In that letter, Mr. Whitacre states that the obligation to unbundle SBC's new facilities deployed for purposes of DSL service has led to it to halt provisioning of its new DSL service in Illinois. Affected consumers, Mr. Whitacre states,

¹⁶ See Letter from Robert W. Quinn, AT&T, to Dorothy Attwood, Common Carrier Bureau, and David H.